dent against loss or damage on account of loss of rents by fire if at the time of the fire there should be a city ordinance having to do with the construction or repair of the property involved preventing its repair. The question is necessarily presented as to whether or not at the time of the fire there was a city ordinance prohibiting the repair of the building. The policy may not be extended by construction. It did not insure against unlawful acts of the municipal officers in refusing to issue a permit. It merely insured that at the time of the fire the insured would, under the ordinances of the municipality, be entitled to a permit, there being no ordinance preventing the repair of the building. Now, when we turn to the record, we find that the respondents, at the trial of the case, in addition to their effort to obtain a reformation of the policy so as to require it by express terms to insure against the wrongful acts of municipal officers in refusing to grant the permit, contended that there were two municipal ordinances which prevented the restoration of the building, to-wit, 65 (a), (R. 393), which prohibited the repair of the building if repairs in excess of 50% were required unless conforming to a building code; 65 (b) prohibited the repair of the building if there was to be a change in the use and occupancy. We have pointed out to the Court that the evidence was undisputed that the damage to the building only slightly exceeded 30% of the actual sound value of the building at the time of the fire (see references page 7 of Petition). This evidence was undisputed. The District Judge heard the testimony, made a specific finding that damage by fire to the building was less than 50%, possibly equal to 40% (R. 391). The District Judge further explicitly held (R. 396) that there would be no change in the use and occupancy of the building; if restoration of the building was permitted as before the fire, the same tenants would re-occupy

the same. The Court of Appeals recognized that such finding was made by the District Judge.

The case is reported "*World Fire & Marine Ins. Co.* v. *Palmer et al*", 182 Fed. (2d) 707. The Court of Appeals used the following language:

> "Upon the trial of the case by the Court without a jury, the facts were fully developed. The Court made findings of fact and entered conclusions of law to the effect that both the insured and the insurance adjuster and his attorney on behalf of the company had proceeded in good faith in an effort to obtain from the city authorities a permit for the repairs to the building. The Court found that the city authorities were in error in enforcing the ordinance as to fire zone two for the reason that the cost of repairs, found to be $7,000, did not exceed fifty percent of the 'sound value' of the building. This the Court adjudged to be approximately $16,000 or $17,000 at the time of the fire, and thus that the building was damaged to the extent 'of probably forty percent of its sound value.'"

Now, we have the undisputed evidence that damage to the building did not equal 50%, possibly not as much as 35%, of the sound value of the building at the time of the fire. The District Judge so found. The undisputed proof showed there would be no change in the use and occupancy. The District Judge so found and that question was not presented to the Court of Appeals but the correctness of the ruling conceded by respondents. That being true, it necessarily appears that there was no liability under the Demolition Clause. The petitioner had carried its burden. If the damage ever equaled 51%, there would have been coverage under the Demolition Clause. The Court of Appeals, however, erroneously justified its conclusions on the ground that while Mr. Clymer, Assistant City Engineer, estimated the damage to the building not exceeding 30%, that the City

Engineer, Mr. Martin, did not agree with him. The Court used the following language:

> "There was a mistake upon the part of the assistant city engineer in his first determination that the building was in fire zone one, and at that time he appraised the value of the building at $20,000. The mistake was shortly discovered and this appraisal of value was not accepted by his superior, the city engineer."

It is a sufficient reply to the statement of the Court to say that it did not make any difference whether the city engineer agreed with his assistant or not. The entire matter was submitted to the District Judge. As a matter of fact, as we have pointed out in our petition for certiorari, the fire occurred in June, 1948. The city engineer never even saw the property until after September. In order for the city engineer to have made an appraisal, he would have had to measure every square foot of material in the building with an estimated value thereupon, which he never did (R. 183-184).

Mr. Martin, on cross-examination, was confronted with the estimate made by Mr. Clymer, his assistant, admitting that the appraisal showed a sound value of $20,000.00, extent of damage $5,160.00 (R. 184). The witness had no criticism of the appraisal of his assistant whatsoever. He never contended that the permit should be denied by reason of the extent of damage to the building but because his legal opinion was that there was a change in occupancy (R. 191, 193, 195). The District Judge found, as a matter of fact, that there was to be no change in the use and occupancy (R. 396). The District Judge found that refusal to issue the permit was not on the ground of the extent of damage to the building but on account of the city engineer being of the opinion that there would be a change in the use and occupancy (R. 388). The finding of the District Judge as to the facts is set aside and disregarded purely because

the city engineer did not agree with his assistant as to the extent of the damage. Counsel also refers to the testimony of Mr. S. S. Taylor who gave a very low value of the building which was testimony solely as to the market or junk value. It will be noted that Mr. Clymer, the assistant city engineer who made the appraisal assumed that there were 5,800 square feet in the building, valued the same at $78.00 per square foot, deducted depreciation of 50% (R. 180-181). In this manner Mr. Clymer, the assistant city engineer, estimated the extent of the damage to be not exceeding 30%. Mr. S. S. Taylor, however, testifying on a very different theory, used for reproduction $5.50 per square foot, figured a physical depreciation of 40% and then an additional 25% of what he called economic depreciation (R. 361). He admitted that the value placed was merely junk or sale value (R. 375-376).

Counsel referred to the testimony of Mr. J. H. Wells (R. 247) who valued the building after the fire at $4,761.50, which, of course, meant the salable value after the fire which had no relation to the case.

The net result is that we have a finding of fact of the District Judge, based upon undisputed testimony, heard by him orally without a jury, and, according to the decision of the Court of Appeals, the findings of fact of the District Judge are set aside merely because of the alleged disapproval of the valuation by the city engineer, all of which was heard by the District Judge.

The testimony of Mr. Martin, the City Engineer, Mr. Clymer, his assistant, Mr. Manning, his assistant, Mr. Taylor and Mr. Wells was heard before the District Judge on oral testimony and doubtless proper consideration was given thereto. There is no contention in this case. Upon the other hand, it is expressly admitted that the findings of the District Judge were supported by substantial evidence and petitioner says by undisputed evidence.

Point II

The Question of the Coverage under the Demolition Clause Presented a Judicial and Not an Administrative Question.

It appearing that the District Judge who heard the case on oral testimony held under the undisputed facts that there was no State law or municipal ordinance having to do with the construction or repair of buildings preventing restoration after the fire; that the damage to the building did not equal 50%, but barely over 30%; that the property was not to be devoted to a new use and occupancy after the repair. The District Judge having so judicially determined, it would appear that unless the finding of facts of the District Judge are to be disregarded that this would dispose of the case.

The Court of Appeals, however, totally disregarding the finding of facts of the District Judge held that the decision of the City Engineer was final though we have previously pointed out that, upon the undisputed evidence, the City Engineer did not refuse the permit because of the extent of the damage to the building but because of his erroneous opinion on the question of law as to the use and occupancy to which the building would be subjected when restored (R. 191). And, disregarding the findings of the District Judge, the Court of Appeals held that the decision of the administrative officer, the City Engineer, was final, conclusive and not subject to judicial review. The court used the following language:

> "Likewise knowledge that no repairs or rebuilding could be done at all until a permit therefor had been obtained, must be assumed. (The terms of the policy and its endorsements evidence a contract of insurance which in case of loss of rents occasioned by fire, required

> the insureds in good faith, and with reasonable prudence, as one who desired to restore the building to its former condition would exercise, to make proper application and attempt to secure from the proper authorities a permit to make such restoration. If such effort be made, a determination by the building authorities of the city, made in good faith, in the exercise of an informed judgment, under all of the facts known to such authorities (especially where a question of value is the primary one), which finds a reasonable basis for support in the terms and provisions of a city ordinance, concludes the question of insurance coverage. A loss of rentals resulting from such a determination is, within the terms of the endorsement, 'occasioned by the enforcement of any State or Municipal law or ordinance regulating the construction and repair of buildings and in force at the time such loss occurs.' Such a provision does not contemplate that the actual and conclusive effectiveness of the law or ordinance to prevent repairs or replacements, as determined only by a Court of last resort, and as the result of protracted litigation, shall be the test by which liability is ascertained . . ."

It seems to have been the view of the Court of Appeals that if petitioner was permitted to submit the question of its liability under the Demolition Clause to a Court for review, the respondents might be subjected to lengthy litigation. In other words, the Court of Appeals itself never judicially construed the coverage under the Demolition Clause. Upon the other hand, it delegated its functions to the City Engineer. The petitioner contracted with the respondents that it would indemnify them against loss of rents provided there was a State Law or City Ordinance having to do with the repair or construction of buildings preventing restoration. Notwithstanding the fact that it is undisputedly shown that the damage to the building did not equal 50% and that the building was not intended to be subjected to new use and occupancy after restoration, the

Court held that the construction of the ordinance was within the discretion of the city authorities.

The Court of Appeals held that the coverage obligated petitioner to indemnify the respondents against any statute or ordinance which might be construed by the city authorities to prevent the restoration of the building, and while the District Judge held that there was no such statute or ordinance the City Engineer was of the opinion that on account of the fire, although the same tenant would return after the building was repaired, that there was no change in use and occupancy, and while the opinion of the City Engineer was indefensible, contrary to the findings of fact and conclusions of law of the District Judge, the same was permitted to take precedence over the judicial determination of the District Judge, and the decision of such administrative officers had without notice or hearing, free from judicial review, that is to say, the Court delegated its judicial power to the City Engineer.

It may be that the Court was influenced in the decision by the case of *City of Jackson* v. *McPherson,* 162 Miss. 164, 138 So. 604. That case, however, involved an entire City Zoning and the Supreme Court of Mississippi held that under such circumstances the municipal authorities would have very wide discretion. Having completed the zoning, however, property rights became vested, as to which City authorities could exercise no discretion. The Supreme Court made that perfectly clear in the case of *Jones* v. *City of Hattiesburg,* 207 Miss. 491, 42 So. 2d 717, wherein the case of *City of Jackson* v. *McPherson* was distinguished at page 495. The Court used the following language:

> "Mississippi Code of 1942, the Legislature authorized municipalities to enact zoning ordinances, and pursuant to that authority a subsequent zoning ordinance of the City of Jackson was upheld in City of Jackson v. McPherson, 162 Miss. 164, 138 So. 604, 605,

but in that case it was held that the determination of the boundaries of the various zones is vested by law in the city commissioners, 'and, unless the court can say that their action was unreasonable and arbitrary, there is no proper power in the court to interfere'."

The case of *Jones* v. *City of Hattiesburg* presented the same state of facts as are involved here, and the court held that the construction of the City ordinance holding that a permit was not permissible was of itself unreasonable and arbitrary. The court said:

> "* * * and that the action of the city authorities in denying such use of the property is an unreasonable and arbitrary interpretation of the zoning ordinance which tends to deprive the company of its property and the use thereof, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and Sections 14 and 17 of the Mississippi Constitution of 1890."

In other words, the municipal authorities have wide discretion in the establishing of the boundaries of a city zoning system but having established it, it is arbitrary and unlawful for the City authorities to prevent improvements had thereupon in accordance with the provisions of prevailing ordinances.

There were no facts and circumstances in this case involving any discretion of municipal officers. Upon the other hand, the right of the respondents to restore the building according to the findings of the District Judge were absolute and unconditional and the conduct of the City authorities in refusing the permit was illegal and wrongful, and arbitrary according to the decisions of the Supreme Court of Mississippi.

It has occurred to us that probably the Court of Appeals was misled by the decision of *New Orleans Real Estate Mortgage & Securities Co.* v. *Teutonia Insurance Co.,* (La.)

54 So. 466. In that case a fire in the City of New Orleans practically destroyed a brick building several stories high with the result that the walls left standing were a menace to the public. It became the duty and the city authorities had discretion under the circumstances upon giving 48 hours notice to tear the walls down. Such notice having been given, the Supreme Court of Louisiana held that the insurers failed to avail themselves of a judicial remedy to which they are entitled. The Court saying:

> "The defendant companies could have had the matter contested, if they had so desired. The order of the city engineer was promptly transmitted to them by plaintiff 'for such action as you may desire to take.' All they did was to indite a letter to the counsel of plaintiff saying that they protested against the order. The counsel very properly replied: Direct your protest to the city engineer, not to us, who are acting under compulsion."

In this case there is no pleading, evidence or contention that the damaged building was in any manner a menace or source of danger to the public. The City authorities did not so contend but based their decision upon entirely different grounds. The finding of the District Judge negatived any such conclusion. It is very true that under Section 74 of the Municipal Ordinances the City authorities may upon due and timely notice order the destruction of a building. But coming to the question of fire, the ordinance limits the right to cases where the damage to the building exceeds 50%. The Ordinance contains the following language:

> "* * * or which has become damaged by the elements of fire to an extent of 50 percent of its value, may be condemned by the Building Inspector."

Mr. Martin, the City Engineer, specifically testified that the damage consisted practically of the roof and that he

noticed no damage to the exterior walls (R. 180-181). Respondent, Mr. Palmer, testified that the outside walls were not damaged, roof totally destroyed, floor not burned, partition walls in good condition (R. 38-39). Therefore, under no circumstances, could the building have been dangerous to the public and no contention has been made in the case.

Point III

In Determining the Right of Restoration of the Building, the Sound Value Is the Controlling Element and Not the Market Value.

We presented that question in the petition for certiorari fully under Point VIII, at page 27. We stated that the announcement of the Court of Appeals stood alone in American jurisprudence.

Opposing counsel have cited no authority dealing with the subject matter to the contrary. Counsel take the position that the case of *Palatine Ins. Co.* v. *Nunn,* 55 So. 44, 99 Miss. 439, was not based on the sound value. It is true that the opinion did not expressly state that the sound value was adopted, but it is very clear that such value was used as the basis. This position is strengthened by the testimony of the City Engineer in this case that the Department had always used what is known as the "sound value" and had used the "sound value" in this case (R. 183). The witness stated that he had never heard of "sale value" being used as a basis (R. 180, 181, 183, 184).

The cases cited by opposing counsel deal with property having a "market value." They may be distinguished as follows:

Counsel cite the case of *Barnsdall Refining Corp.* v. *Cushman-Wilson Oil Co.* (1st Cir.) 97 F. 2d 481, which involved a sale of personal property.

Counsel cite the case of *Bonynge* v. *Helvering, Com'r. of Internal Revenue* (2d Cir.) 117 F. 2d 157. This case involved the value of a worthless note which the taxpayer held, given by his own son, which he was endeavoring to deduct from his income tax return.

Counsel cite the case of *Allen* v. *Long, Commissioner,* (Mass.), 70 A.L.R. 1299, which involved the profit made

by a taxpayer on the sale of stocks on one of the exchanges.

Council cite the case of *Bagdasarian* v. *Gragnon,* 192 Pac. 2d 935, which case dealt with a sale of personal property having a market value on the open market.

In the case of *Trustees of Phillips Exeter Academy* v. *Exeter,* 33 Atl. 2d 665, the court held that when authorities assess property for taxation the market value should be used. If the property did not have any sale value, it would not be assessed at all.

Point IV

The Valued Policy Law Not Involved in This Case

Counsel concedes that the valued policy law has no application in this case.

In States having the valued policy law, if a City ordinance prevented the restoration of the property, the loss would be total and the valued policy law would apply. But there are two reasons why the valued policy law would have no application in this case:

First, the insurance doesn't cover the building; it covers rents. In the case of *First Inv. Co.* v. *North British & Mercantile Ins. Co.*, 33 F. 2d 785, the court held that the valued policy law had no application to a rent policy, using the following language:

> "But here the insurance was not on the building but the rentals thereof, and the contract provided the method by which the loss, if any, was to be ascertained, and that is the length of time from the date of the fire that would be required, with due diligence, to restore the rented portion of the building to the same tenantable condition as at the time of the fire.

Point V

The Mere Fact That the Petitioner Charged an Extra Premium for the Demolition Clause Does Not Extend the Coverage.

The Court of Appeals seem to be influenced in deciding the case by the fact that the petitioner charged an additional premium for the Demolition Clause, and opposing Counsel in their Brief lay great stress on the fact that a premium was paid for the Demolition Clause.

But it is apparent that the petitioner understood two burdens: (1) the Primary Clause, for which a specific premium was charged, as to which petitioner admits liability; and (2) the petitioner undertook an additional burden evidenced by the Demolition Clause and for which it was entitled and did charge an additional premium.

Liability under the Demolition Clause, however, did not accrue except and unless the respondents were prevented by State Statute or City Ordinance from restoring the property, an event which never took place. Therefore, no liability was incurred by the petitioner under the Demolition Clause.

The Court of Appeals, as well as opposing counsel seem to be under the impression that if the petitioner collected a premium for the hazard that coverage exists although the circumstances insured against never arose.

In the case of *Sanders* v. *Jefferson Standard Life Insurance Company* (5th Cir.), 10 Fed. (2d) 143, where the Insurance Company had collected a premium on the life of the decedent and an additional premium covering Double Indemnity, but provided that the Double Indemnity should not be recoverable if the insured came to his death as the result of homicide, which in fact happened, the Court of

Appeals held that the claim for Double Indemnity had never become due, using the following language:

> "The maker of a promissory note payable one year after date would not contest it by resisting an attempt to enforce it before it was due. We are of opinion that within the meaning of the provision for incontestability the insurer did not contest the policy by invoking the terms of the double indemnity provision, and that it was open to the insurer to deny the liability asserted on the ground that the contingency in which double indemnity was payable did not occur.
>
> "The decree is affirmed."

That is to say the state of facts under which the Double Indemnity was payable never arose, which is the exact situation here. The above case was expressly approved by the Supreme Court of Mississippi in the case of *Lavender et al.* v. *Volunteer State Life Ins. Co.*, 157 So. 101, 171 Miss. 169.

Point VI

The Policy Contract Involved Should Be Construed Just as Any Other Contract and Nothing Added to it by Construction.

The contract sued upon, that is to say, the Demolition Clause, is free from ambiguity and, therefore, was its own construer. *Hamner et al.* v. *Yazoo Delta Lumber Co.*, 56 So. 466, 100 Miss. 349. Opposing counsel, on Page 19 of Brief of Respondents, makes the following statement:

> "In the letter of transmittal of the contract of insurance, the agent wrote: 'Due to the city ordinance, the building cannot be replaced, and in order to cover the loss due to the inability to rebuild due to the city ordinance, the additional premium of $65.65 was charged.' "

That letter was written transmitting the original policy in 1946 which the respondents retained without objection and one year later accepted a renewal thereof containing the Demolition Clause, there being no contention that the Clause was not satisfactory. The letter was introduced in support of respondents' complaint for reformation of the policy requiring coverage for unlawful issuance of the permit. It was conceded and the appellees knew that the agent had no forms in his possession and was without authority to make the endorsement without permission in advance from the company (R. 85-86). The petitioner was frank in its dealings with the respondents, would not have accepted the risk if it had covered refusal by Governmental Agency to issue a permit (R. 293-294). The complaint asking reformation of the policy was refused by the District Judge because, among other reasons, the agent had no authority to make the endorsement without the consent of the company and without power to vary the same. Reformation might have been denied upon eight or ten grounds not

necessary to be set out here. The action of the District Judge in refusing reformation was expressly affirmed by the Court of Appeals. Opposing counsel, however, are endeavoring to get the Court to reform the policy by construction. The Supreme Court of Mississippi has expressly held that this may not be done. *Newman* v. *National Fire Ins. Co.*, 118 So. 295, 152 Miss. 344.

In the case of *Barry* v. *Lamar Life Ins. Co.*, the Court held that the insurer had the right to assume or not assume certain risks and that the policy must be enforced just as written. The same was held in *Lavender* v. *Volunteer State Life Ins. Co.*, 157 So. 101, 171 Miss. 699. In *Continental Casualty Co.* v. *Hall*, 80 So. 605, 118 Miss. 871, the Court held the policy should be construed as written and that the same must be construed like any other contract. *Georgia Casualty Co.* v. *Cotton Mills Products Co.*, 132 So. 73, 159 Miss. 396.

At Page 21 of respondents' brief, opposing counsel makes reference to certain portions of the record not transmitted. We are attaching hereto as Appendix I all pertinent municipal ordinances of the City of Jackson, as Appendix II exhibit to the testimony of S. S. Taylor desired by opposing counsel, as Appendix III stipulation to the effect that with such appendices the record is entirely adequate for presentation of the questions involved.

It is respectfully submitted that it cannot be said that the application presents unimportant questions (1) where the decision, according to the express decision of the Supreme Court of Mississippi, permits a construction of municipal ordinances violating the Constitution of the State of Mississippi, (2) where the decision of the Court of Appeals confers upon ministerial officers authority to judicially determine the meaning of municipal ordinances at variance with that of the District Judge and which departmental

determination is permitted to supersede and take the place of the District Judge thereby depriving it of the right of judicial review, (3) where the Court of Appeals sets aside and disregards findings of fact of the District Judge based, according to the petitioner, on undisputed proof admittedly based on substantial evidence by respondents' counsel, (4) where the Court of Appeals takes the position contrary to every reported case that the ordinances meant market value and not sound value.

We, therefore, respectfully pray that the writ of certiorari should be granted, that judgment should be entered by this Court holding that the Demolition Clause never became in force, that the findings of fact and conclusions of the District Judge should not be utterly disregarded and set aside, and, if mistaken, the case should be reversed and the Court of Appeals should be required itself to judicially determine the coverage under the Demolition Clause and not delegate such power to a city administrative official without judicial review.

Respectfully submitted,

WM. H. WATKINS,
P. H. EAGER, JR.,
THOS. H. WATKINS,
MRS. ELIZABETH HULEN,
Counsel for Petitioner.

Certificate

I, William H. Watkins, Counsel for the petitioner in the annexed cause, certify that I have this day handed to William Harold Cox, Attorney for the respondents, a true and correct copy of the within brief this the 18th day of September, 1950.

WM. H. WATKINS,
Of Counsel.

APPENDIX I

"Section 7. Present Use to Continue: Be it further ordained, that the lawful use of land existing at the time of adoption of this ordinance, although such use does not conform to the provisions hereof, may be continued, but if such non-conforming use is discontinued, any future use of said premises shall be in conformity with the provision of this ordinance."

"Section 65. The following specified requirements shall apply to existing buildings which for any reason whatsoever do not conform to the requirements of this Code for a new building:

"(a) Major Alterations and Repairs. If alterations and/or repairs in excess of 50 per cent of the value of an existing building are made to such building within any period of 12 months, the entire building shall be made to conform with the requirements given herein for new buildings. * * *

"(B) Changed Use. If the existing use or occupancy of an existing building is changed to a use or occupancy which would not be permitted in a similar building hereafter erected, the entire building shall be made to conform with the requirements given herein for new building; * * *

"(d) Minor Alterations and Repairs. Every alteration or repair to any structural part or portion of an existing building shall, when deemed necessary in the opinion of the Building Inspector, be made to conform to the requirements of this Code for new buildings. Minor alterations, repairs and changes not covered by the preceding paragraphs (a), (b) and (c) may be made with the same materials of which the building in constructed; provided, that not more than 25 per cent of the roof covering of any building shall be replaced in any period of 12 months unless the entire roof covering is made to conform to the requirements of this Code for new building.

"New roofing meeting the requirements of this Code may be placed over existing roofing when the existing roof-

ing and room framing are such as to permit the new roofing to be properly supported and securely fastened."

Section 67, Revised Ordinance of the City of Jackson 1938:

No person shall erect or construct or proceed with the erection or construction of any building or structure, nor add to, enlarge, move, improve, alter, repair, convert, extend or demolish any building or structure, or cause the same to be done, without first obtaining a building permit therefor from the Building Inspector.

Section 68, Municipal Ordinance of the City of Jackson, Mississippi

"68. The application, plans and specifications filed by an applicant for a permit shall be checked by the Building Inspector and if found to be in conformity with the requirements of this Code and all other laws or ordinances applicable thereto, the Building Inspector shall upon receipt of the required permit fee issue a permit therefor.

Section 74, Revised Ordinances of the City of Jackson, 1938:

Any building or portion thereof, including buildings and/or structures in process of erection, if found to be dangerous to persons or property, or unsafe for the purpose for which it is being used, or in danger from fire due to defects in construction, or dangerous for use because of insufficient means of egress in case of fire, or which violates the provisions of this Code due to the removal, decay, deterioration or the falling off of any thing, appliance, device or requirement originally required by this Code, or which has become damaged by the elements of fire to an extent of 50 per cent of its value, may be condemned by the Building Inspector. The Building Inspector may order portions of the structural frame of a building or structure to be exposed for inspection when in his opinion they are in an unsafe condition. In any of the aforesaid cases the Building Inspector shall serve notice in writing on the owner, reputed owner or person in charge of such a building or prem-

ises, setting forth what must be done to make such building safe. The person receiving such notice shall commence within forty eight hours (48) thereafter to make the changes, repairs or alterations set out in such notice and diligently proceed with such work or demolish the building. No such building shall be occupied or used for any purpose after the Building Inspector serves written notice of its unsafe or dangerous condition until the instructions of the Building Inspector have been complied with.

Section 78, Revised Ordinances of the City of Jackson 1938:

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use or occupy or maintain any building and/or structure or any portion of any building and/or structure in the city, contrary to or in violation of any provision of this code or to cause, permit or suffer the same to be done.

Any person, firm, or corporation violating any of the provisions of this Code shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted, and upon the conviction of any such violation such person shall be punishable by fine of not more than One Hundred Dollars ($100.00), or by imprisonment in the city jail for not more than thirty days (30), or both such fine and imprisonment.

Section 187 of the Building Code is part of Part V, Chapter 16, dealing with special restriction applicable in Fire Zone No. 2, and Section 187 (a) contains the following language:

"Building of Type V construction erected or constructed in Fire Zone No. 2 shall have all exterior walls of not less than one-hour fire-resisting construction as specified in Section 487."

Section 187 (c) contains the following:

"(c) Percentage of Alteration.

"Any building in Fire Zone No. 2 which is enlarged, altered, raised or built upon to an extent exceeding an expenditure of 50 per cent of the value of such building shall be made to comply with the requirements of a new building in such fire zone."

Section 187 (e) contains the following:

"(e) Buildings which do not comply.

"No building of Type IV Construction in excess of one thousand square feet (1000 sq. ft.) in area, nor any building of Type V Construction, except as specified in paragraph (a) of this section, already erected in Fire Zone No. 2, shall hereafter be altered, raised, enlarged, added to or moved except as follows:

"1. Such building may be demolished.

"2. Such building may be moved outside the limits of Fire Zone No. 2.

"3. Such building may be made to conform to the provision of paragraph (a) of this Section.

"4. Changes, alterations and repairs to the interior of such building or to the front facing a public street may be made provided such changes do not increase the fire hazard of the building.

"5. Roofs of such buildings may be covered only with 'Fire Retardant' roofing as specified in Section 490."

APPENDIX II

APPRAISAL

Prepared by S. S. Taylor
201 Deposit Guaranty Bank Bldg.
Jackson, Mississippi

August 25, 1949

Mr. W. H. Cox, Attorney
Deposit Guaranty Bank Building
Jackson, Mississippi

In Re: Property, Bowden L. Palmer, John Bruno, Jr., 313 North State Street, Jackson, Mississippi.

Dear Sir:

This is to certify that I have made a careful inspection of the above captioned property, and attach hereto a drawing of the first and second floors showing the total area which is 5030 square feet.

On the following pages I have itemized my study on subject property and in my opinion give the following values:

Building "as is"	$ 3,483.00	
Land Value, 74′ @ 450.00	30,300.00	
Total		$33,783.00
Value of Building before fire	$ 9,683.00	
Land Value, 74′ @ 450.00	30,300.00	
		$39,983.00

I further certify that I have no past, present nor contemplated interest in subject property and that my fee is in no way contingent upon the amount of the valuation.

Respectfully submitted,

S. S. Taylor, M. A. I.

APPRAISAL

I. *Purpose of Appraisal:*

To determine the Fair Market Value of subject property before and after the fire. Fire destroyed the building partially in June, 1948.

II. *Location of Property:*

Subject property is located in the third block on west side of North State Street across from Sears, Roebuck Store. On the North of subject property there are old residences and one six unit apartment house which is being used for offices. This property is located in a section that is being gradually developed "Commercial."

III. *Estimate of Reproduction Value*

Present Cost of Construction:

Residence—5030 sq. ft. @ 5.50 =	$27,665.00	
Less Physical Depreciation 40%; Economic Depreciation 25%; Total 65% =	17,982.00	
Depreciated value	$9,683.00	
Estimated cost of repairs after fire made by Capital Building Contractors	6,200.00	
Estimated Salvage Value		$3,483.00
Depreciated Value of Improvements before fire	$9,683.00	
Estimate—Jordon Construction Company for replacement of Building for residential purposes	7,225.00	
Estimated Salvage Value		$2,458.00

IV. *Condition of Improvements:*

Improvements have depreciated rapidly since June, 1948 due to water damage where the roof has been burned off and

it is my estimate that the cost of replacing additional damage to the property it would exceed former estimates by at least $2,000.00.

V. *Economic Life:*

Subject property was an old two story residence converted into commercial property which had an economic life of an estimated 10 years for such use before the fire. The rental income from the property was $450.00 per month or an annual rental of $5400.00. Since the City will not permit the restoration of the building for commercial uses there has been material loss to the owners in rents which would under ordinary circumstances carry the property over a period of several years until the owners were ready to improve the property with a commercial building. A number of old residences have been sold for commercial uses on State Street and the improvements have been used to carry the property until such time as the owners desire to develop the property to its highest and best use which the loss in rent alone since June, 1948 would be $6300.00.

VI. *Proposals to Repair and Explanation of Value:*

I am attaching hereto a copy of a proposal to repair the house for residential use submitted by Capitol Building Company on June 16, 1948 amounting to $6,208.00; also, a bid from R. E. Jordon Construction Company in the amount of $7,225.00, same to include asbestos wall siding over 15 # saturated felt and an exterior stair framing. The City Building Restrictions will not permit this house to be repaired and used commercially as it had been since the owners purchased the property on the grounds that the building suffered a 50% loss; this, I feel, is correct when based on reproduction cost less depreciation as outlined in this appraisal.

Subject house is over 49 years old and with high ceilings, large rooms and wasted space, the depreciation (Physical 40%; Economic and Functional 25%) is justified, which gives the house before the fire a fair value of $9,683.00, and in my opinion, would be the highest price that a purchaser would consider on this building.

Copy

JORDAN CONSTRUCTION COMPANY

Jackson, Mississippi

August 8, 1949

Mr. Bowden L. Palmer,
Mr. John Bruno, Jr.,
Box 1024,
Jackson, Mississippi.

GENTLEMEN:

Agreeable to your request, we outline herewith, the work that we understand that you wish figured in your building located at 313 North State Street, this City. The work and estimate as follows:

Remove all interior trim from existing openings. Remove nails and carefully store same on site. Remove all interior plaster and lath. Furnish and install new plaster grounds throughout. Lath all interior walls and ceilings with metal lath, and plaster in three (3) coat work over ¾ grounds. After the plaster has thoroughly dried, the trim that has been removed and stored is to be replaced. Furnish and install over exterior wall surfaces #1 quality asbestos wall siding over 15# Saturated felt. Furnish and install exterior stair framing.

All work in a neat and workmanlike manner for the sum of: Seven Thousand Two Hundred Twenty-five and no/100 Dollars, ($7,225.00).

Respectfully submitted,

JORDAN CONSTRUCTION COMPANY,
By R. E. JORDON.

rej/w.

Copy

June 18, 1948

Better Living Company,
Jackson, Mississippi.

GENTLEMEN:

Re: Fire Loss, 313 N. State Street

We propose to furnish all labor, materials, equipment, supervision, etc., necessary to restore the above property damaged by Fire and Water, complete with the exception of the painting and papering in the offices occupied by Dr. Muir, and the Beauty Salon, for the total sum of Six Thousand Two hundred Eight Dollars ($6,208.00).

As requested by you, we are enclosing herewith a copy of the detailed estimate covering the above work.

Yours very truly,

CAPITOL BUILDING COMPANY,
By L. S. KENDRICK.

Copy

June 18, 1949.

Detailed Estimate Covering Fire Loss 313 N. State Street

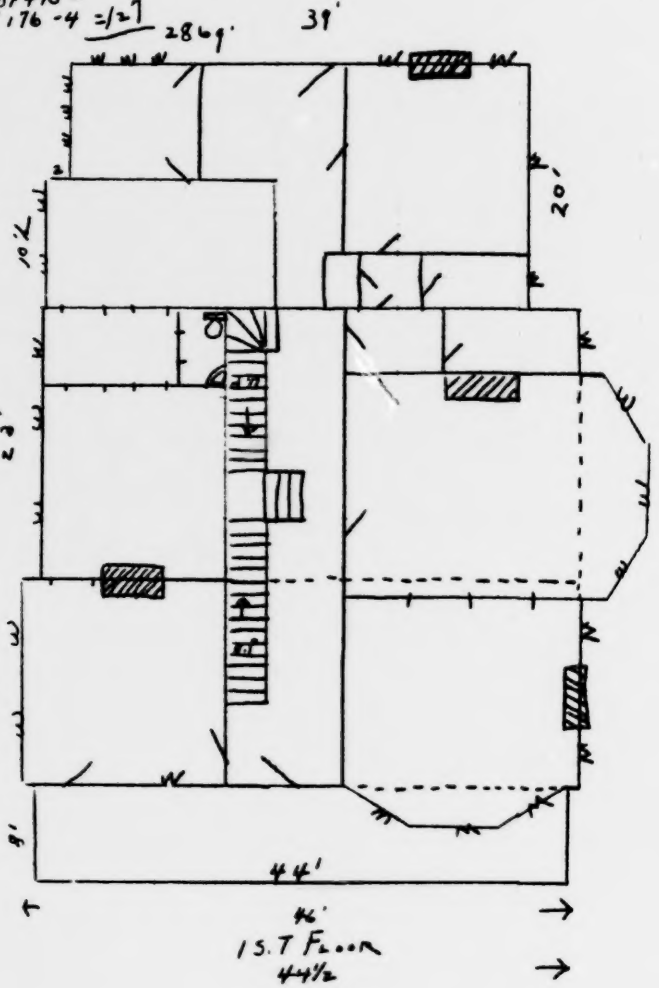
1. Demolition, and Preparatory Cleaning, Labor & Materials		755.50
2. Rough Carpentry		915.00
3. Finish Carpentry and Mill work		900.00
4. Roofing & Metal repairs		695.00
5. Plumbing		196.00
6. Electric Wiring		169.50
7. Painting		875.00
8. Glazing		25.00
9. Plastering		250.00
Direct cost, labor, materials and sub-contract		4,781.00
General: Foreman, time not working	150.00	
Insurance & Soc. Security	176.00	
Permit & License	19.50	
Contractors Supervision	1020.00	
Sales Tax	62.09	
		1,427.59
Total		$6,208.59

CAPITOL BUILDING COMPANY,
By L. S. KENDRICK.

(Here follows 2 Drawings)

Total area Back Floor = 5036
4837

17 x 46 = 782
23 x 44½ = 1024
20 x 39 = 780
2 x 10½ = 21
3½ x 14 = 49
2 x 18½ = 37
3½ x 14 = 49
½(8 x 45 = 176 - 4 = 127



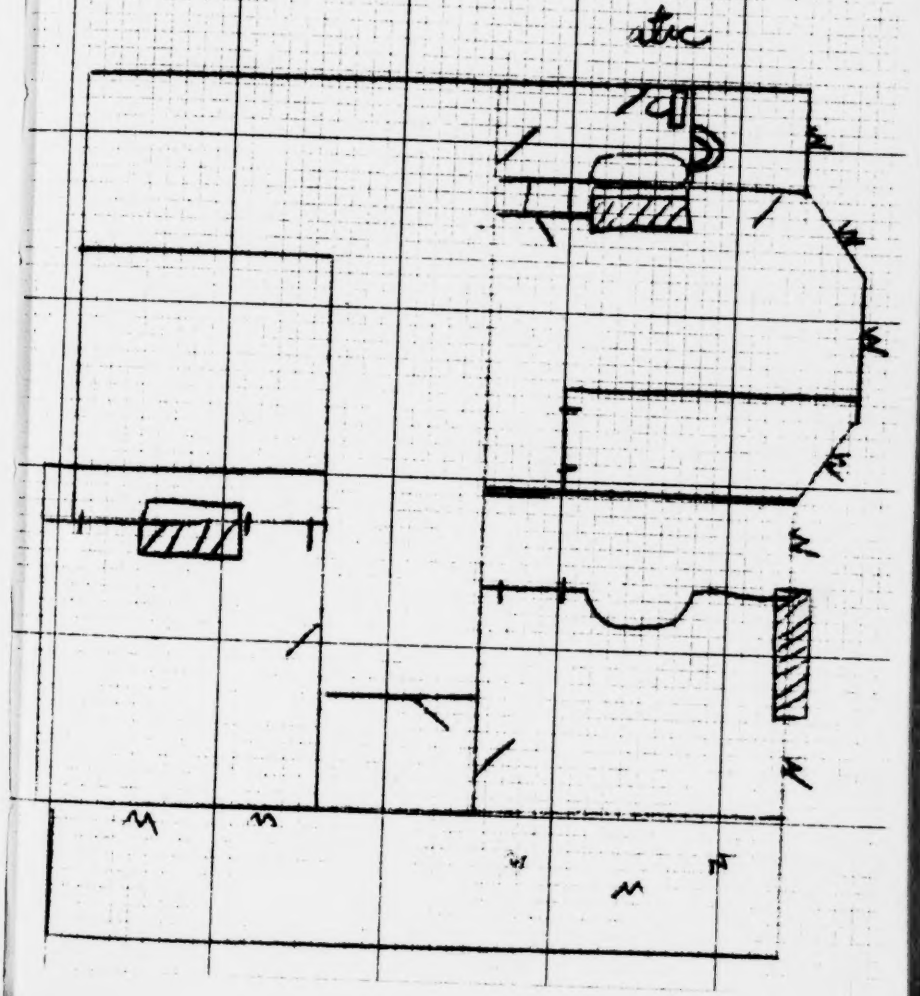
43 x 44 = 1896

2 x 20 = 40

2 x (3½ x 14 = 98

½ (8 x 44 = 176 - 49 = 127

2136



August 25, 1949

Mr. W. H. Cox, Attorney,
Deposit Guaranty Bank Building,
Jackson, Mississippi.

In Re: Property, Bowden L. Palmer, John Bruno, Jr.,
313 North State Street, Jackson, Mississippi

Dear Sir:

On the following pages there are copies of Estimate of Reproduction costs from F. B. Sweatt and Post and Witty on the above captioned property.

In my opinion, these estimates seem too excessive based on the type of construction of subject house. In making reproduction cost of this type of house, we usually use $5.50 per square foot where the rooms are large and with no subfloor.

Several years ago I had an occasion to go into subject house as the wife of my nightwatchman in the Bank operated a boarding house, and while he was sick I made several visits. This house was built about 1900 and for the past several years has been used as a boarding house.

Should the estimates of reproduction costs of Mr. F. B. Sweatt or Post and Witty be used in this connection there should be a Physical Depreciation as outlined by them of 40% plus 39% Economic and Functional Depreciation for the reason, chimneys that are no longer in use, large rooms, high ceilings, poor arrangement, etc. This would make an overall depreciation of 79% or $33,914.00 leaving a depreciated value of $9,016.00. This building as a residence with the inconveniences in arrangement and general condition should not be given, in my opinion, a value exceeding $9,000.00 before the fire.

Respectfully submitted,

S. S. Taylor,
M. A. I.

ESTIMATE OF FIRE DAMAGE TO BUILDING ON
313 N. State Street

Our C.N. 349
August 3, 1949

Item	Quantity	Units			Totals		Totals
		Labor	M't'l.	Total	Labor	M't'l.	
1. Removal of Damaged Materials	L.S.				677.00		677.00
2. New Roof Rafters	4.6 MB.f.			150.00			690.00
Sheathing	5.6 M.S.f.			140.00			784.00
3. Roofing (Salvage Edge)	9 sqs.			10.00			90.00
Asphalt Shingles	28 sqs.			13.00			364.00
Gutters	20 ft.			1.25			25.00
4. Cornice	20 ft.			5.00			100.00
5. Siding (New)	.030 M s.f.			235.00			7.05
6. Remove & Renail Siding	.280 M s.f.	90.00		90.00			25.20
7. New Sheathing on Back Side	.280 M s.f.			140.00			39.20
8. New Studies on Back Side	.20 M.B.ft.			150.00			30.00
9. Plaster	12 s. yds.			2.00			24.00
10. Wood Ceiling—2nd Floor	1800 s.f.			300.00			540.00
11. Repaint woodwork 2nd Floor	L.S.						375.00
12. Door (New)	1			20.00			20.00
13. Base	20 ft.			0.50			10.00
14. Repaper Walls & Ceiling	L.S.						300.00
15. Remake Gables at Back	4			70.00			280.00
16. Plumbing	L.S.						700.00
17. Wiring	L.S.						400.00
18. Heating	L.S.						100.00
19. Sub-total							5,580.45
20. Overhead 10%							558.04
21. Sub-total							6,138.49
22. Profit—10% of 21							613.84
23. Total Estimated Cost of Damage							$6,752.33

Respectfully Submitted

S/S Seymour Post
Post and Witty
Structural Engineers

ESTIMATE FIRE DAMAGE

313 North State St.

	Material	Labor	Total
Wrecking Damage Post	.....	350.00	250.00
5000 ft. Sheathing	500.00	375.00	875.00
4000 ft. Framing	400.00	300.00	700.00
44 sq. Roofing	352.00	132.00	484.00
Patching Replacing Plaster	.....	.....	400.00
1000 ft. Ceiling	150.00	100.00	250.00
5 Doors complete with Frames	40.00	.....	200.00
2 Windows Complete with Frame	40.00	.....	80.00
200 Ft. Flooring Pine	30.00	12.00	42.00
12 ft. of Cornice	20.00	40.00	60.00
100 ft. Siding	15.00	15.00	30.00
Replacing 4 Shingle Gables	40.00	100.00	140.00
Replacing Celotex	20.00	20.00	40.00
Replacing Broken Glass	.....	.....	30.00
Patching Flooring down Stairs	5.00	10.00	15.00
Replacing wiring in attic	.....	.....	175.00
Taking Down and re-hanging Fixture	.....	.....	25.00
Plumbing one comode and lavatory	.....	.....	200.00
Painting papering outside one coat	.....	.....	900.00
Taxes and Insurance	.....	.....	125.00
Drayage	.....	75.00	75.00
City Permits	.....	.....	13.50
			$5,109.50
Profit overhead			510.95
			$5,620.45
Replacement Cost 4770 sq.ft.	9.00	.....	42,930.00
Less 40% Dep.			17,112.00
Sound Value F. B. Sweatt			$25,758.00

ESTIMATE OF COST OF BUILDING ON 313 N. STATE STREET

(Before Fire Damage and Based on Today's Prices)

C.N. 349.

Item	Quantity	Units			Totals		Total
		Labor	M't'l.	Total	Labor	M't'l.	
1. Grading & Excavation							
Clearing Site	3000 s.f.	0.01	.....	0.01	60.00	.....	60.00
Hand Excavation	46.5 c. yds.	3.00	.....	3.00	139.50	.....	139.50
Compacted fill	25.0 yds.	2.00	.....	2.00	50.00	.....	50.00
Layout & B.B.	L.S.	.....	.....	.....	50.00	15.00	65.00
General Grading	L.S.	.....	.....	.....	100.00	.....	100.00
2. Concrete							
Footings	46.5 c. yds.	3.00	10.00	13.00	139.50	465.00	605.50
Walks & Steps	L.S.	.....	.....	.....	45.00	100.00	145.00
Splash Blocks	5	3.00	3.50	6.50	15.00	17.50	32.50
3. Masonry							
Brick Walls & Piers	7.3 M	42.50	29.50	72.00	309.25	215.35	524.60
Brick Chimneys	27.3 M	55.00	29.50	84.50	1,501.50	805.35	2,306.85
4. Carpentry							
Cornice	226 ft.	1.00	3.00	4.00	226.00	678.00	904.00
Exterior Trim	1200 ft.	0.07	0.15	0.22	84.00	180.00	264.00
Structural Members	24 M.B.F.	65.00	85.00	150.00	1,560.00	2,040.00	3,600.00
Sheathing & Sub-floors	14.230 s.f.	50.00	88.00	138.00	711.50	1,252.24	1,963.74
Ceiling	4132 s.f.	60.00	225.00	285.00	247.92	939.70	1,187.62
Finish Floor	6771 s.f.	60.00	275.00	335.00	406.20	1,861.75	2,267.95
Bevel Siding	6880 s.f.	65.00	150.00	215.00	447.20	1,032.00	1,479.20
Deadening Felt	68.8 sqs.	0.20	0.80	1.00	13.76	55.04	68.80
Floor Finishing	4770 s.f.	0.06	0.02	0.08	286.20	95.40	381.60
Wood Bucks	33	3.00	12.00	15.00	99.00	396.00	495.00
Plaster Grounds	1178 ft.	0.13	0.02	0.15	153.14	23.56	176.70
Wood Wainscots	660 s.f.	0.06	0.03	0.36	39.60	198.00	237.60

5. Millwork	L.S.	.....	.....	.....	2,500.00	5,000.00	7,500.00
6. Rough Hardware	L.S.	.....	.....	.....	.....	150.00	150.00
7. Finish Hardware	L.S.	.....	.....	.....	175.00	211.00	386.00
8. Roofing							
Salvage Edge Roof	12.7 sqs.	3.00	7.00	10.00	38.10	88.90	127.00
Asphalt Shingles	38.3 sqs.	3.00	10.00	13.00	114.90	383.00	497.90
Gutters	226	0.50	0.75	1.25	113.00	169.50	282.50
Downspouts	144′	0.25	0.75	1.00	36.00	108.00	144.00
Flashing	132′	0.25	0.50	0.75	33.00	66.00	99.00
					$9,694.27	$16,546.29	$26,240.56

Item	Quantity	Units			Totals		Total
		Labor	M't'l.	Total	Labor	M't'l.	
9. Cleanup							
Floors	4470 s.f.	0.01	.....	0.01	44.70	0	44.70
Window Lts	1656 s.f.	0.08	0.02	0.10	132.48	33.12	165.60
10. Miscellaneous							
Fireplaces	4	50.00	100.00	150.00	200.00	400.00	600.00
11. Sub-Bids					10,071.45	16,979.41	27,050.86
1. Plastering							
Gypsum Lath & Plaster	1840 s.y.	.....	.....	1.65	.....	.....	3,036.00
Cornerites	3792 ft.	0.03½	0.01½	0.05	.....	.....	189.60
Corner Bead	350 ft.	.....	.....	0.13	.....	.....	45.50
2. Painting							
Windows	46	.....	.....	6.00	.....	.....	276.00
Base	1364 ft.	.....	.....	0.06	.....	.....	81.84
Stair	L.S.	.....	.....	.....	.....	.....	100.00
Ext. Wall	68.60 sq.	.....	.....	8.00	.....	.....	548.00
Porch	L.S.	.....	.....	.....	.....	.....	75.00
Doors	33	.....	.....	7.50	.....	.....	247.50
Trim	1580 ft.	.....	.....	0.06	.....	.....	94.80
Sanding & Fl. Lin	4770	.....	.....	0.06	.....	.....	286.20
Paper	190 sqs	.....	.....	3.00	.....	.....	570.00
3. Heating	L.S.	.....	.....	.....	.....	.....	2,200.00
4. Plumbing	L.S.	.....	.....	.....	.....	.....	2,550.00
5. Wiring & Fixtures		.....	.....	.....	.....	.....	800.00
Total Sub-Bids							$11,101.24

12. Summary

1. Brought Forward not including sub-bids	10,071.45	16,979.41	27,050.86
2. Sub-Bids			11,101.24
3. General Overhead—5% of $27,050.86			1,352.50
4. Payroll Taxes			
1. A o b 1% of $10,071.45			100.71
2. Bond 3/4 of 1% of $27,050.86			102.87
3. Workmen's Compensation 5% of $10,071.95			503.55
4. Sales Tax 2% of $16,979.41			339.58
5. Insurance L.S.			150.00
6. Permit			135.00
7. Sub-Totals			$40,836.31
8. Profit 10% of 7			4,083.63
9. Sub-Total			44,919.94
10. Architect's Fee 6% of 9			2,695.14
11. Total Estimated Cost			47,615.08

C.N. 349

1. Total Estimated Cost Based on 1949 Prices	$47,615.08
2. Less Depreciation @ 40% of $47,615.08	19,046.00
3. Total Estimated Value of Building (Before fire damage)	$28,569.08

Respectfully Submitted

S/S Seymour Post
Post and Witty
Structural Engineers

APPENDIX III

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 265

THE WORLD FIRE & MARINE INSURANCE COMPANY, *Petitioner,*

vs.

BOWDEN L. PALMER and JOHN BRUNO, JR., *Respondents*

Stipulation as to the Record

It is agreed by and between attorneys for the petitioner and respondents that the petitioner has attached as Appendix II to the Petition for Certiorari a correct copy of the policy contract sued on; that the petitioner has attached as Appendix I to Reply Brief a correct copy of all applicable municipal ordinances of the City of Jackson. Petitioner's counsel has attached as Appendix II to his reply brief exhibit to the testimony of S. S. Taylor.

Wherefore, it is agreed between respective counsel that the record as presented is adequate for the determination of the questions involved.

WM. H. WATKINS,
Attorneys for Petitioner.
WILLIAM HAROLD COX,
Attorney for Respondents.